

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

ORDER

Criminal File No. 7-72 (MJD/JSM)

(2) HOMERO MENDOZA-GOMEZ,

Defendant.

Steven L. Schleicher, Assistant United States Attorney, Counsel for Plaintiff.

Homero Mendoza-Gomez, pro se.

I. INTRODUCTION

This matter is before the Court on Defendant's Pro Se Motion and Questionnaire for Reduction of Sentence Pursuant to 18 U.S.C. § 3582(c). [Docket No. 57]

II. BACKGROUND

Defendant Homero Mendoza-Gomez pled guilty to aiding and abetting distribution of methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(A) and 18 U.S.C. § 2. In December 2007, the Court sentenced Defendant to

108 months in prison. [Docket No. 47] Defendant appealed that sentence, and, on July 30, 2009, the Eighth Circuit Court of Appeals affirmed the sentence.

[Docket Nos. 54-55]

On September 16, 2013, Defendant filed the current motion seeking a reduction of his sentence under 18 U.S.C. § 3582(c).

III. DISCUSSION

Defendant requests that the Court modify his sentence based on his release date as based on his immigration status, his success in prison, his rehabilitation, his family obligations, and his desire to leave prison and return to Mexico.

This Court does not have jurisdiction to modify a term of imprisonment once it has been imposed except 1) upon a motion from the Director of the Bureau of Prisons based on extraordinary and compelling circumstances or the defendant's advanced age; 2) to the extent expressly authorized by statute or by Federal Rule of Criminal Procedure 35; or 3) if a defendant was sentenced based on a sentencing range that has been subsequently reduced by the Sentencing Commission and designated to apply retroactively. 18 U.S.C. § 3582(c). See also United States v. Auman, 8 F.3d 1268, 1270-72 (8th Cir. 1993). In this case, there is no motion from the Director of the Bureau of Prisons; no statute authorizes

modification of Defendant's sentence; Rule 35, which permits correction of an error within 14 days of sentencing and reduction based on substantial assistance to the Government, does not apply; and Defendant was not sentenced based on a sentencing range that has been subsequently reduced by the Sentencing Commission. The Court does not have jurisdiction to modify Defendant's sentence.

Accordingly, based upon the files, records, and proceedings herein, **IT IS HEREBY ORDERED:**

Defendant's Pro Se Motion and Questionnaire for Reduction of Sentence Pursuant to 18 U.S.C. § 3582(c) [Docket No. 57] is **DENIED**.

Dated: November 26, 2013

s/ Michael J. Davis
Michael J. Davis
Chief Judge
United States District Court